

September 28, 2005
Case No.: AUS920010712US1 (9000/61)
Serial No.: 10/044,997
Filed: January 10, 2002
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- - REMARKS - -

The Applicants appreciate the Examiner's many courtesies extended during the September 28, 2005 interview. Applicants file this response to clarify that Dutta is disqualified as a reference under 35 U.S.C. §103(a) based on 35 U.S.C. §103(c).

The Examiner rejected claims 1-32 as unpatentable under 35 U.S.C. §103(a) by Dutta in view of Kaiser in view of Bondi

The §103(a) rejection of claims 1-32 is traversed. Dutta only qualifies as a reference under 35 U.S.C. §102(e), having been published after the filing date of this application. See, the February 18, 2005 office action. Subject matter developed by another which qualifies as "prior art" only under one or more of subsections 35 U.S.C. 102(e), (f), and (g) is not to be considered when determining whether an invention sought to be patented is obvious under 35 U.S.C. §103, provided the subject matter and the claimed invention were commonly owned at the time the invention was made.

At the time of the invention, Dutta was commonly owned by the assignee of this application. Therefore, the subject matter and the claimed invention were commonly owned at the time the invention was made. See, MPEP §2146.

Thus, Dutta does not qualify as prior art under 35 U.S.C. §103(a), and any teachings of Dutta are not to be considered.

Therefore, the §103(a) rejection of claims 1-32 over Dutta in view of other references is improper.

Additionally, Bondi teaches away from the instant claims by teaching a network management module. The instant claims require a peer-to-peer network – entirely different than having a network management module, and any modification as suggested by the Examiner would destroy the principle of operation of the reference. Thus, Bondi cannot support a §103(a) rejection.

Withdrawal of the rejections to claims 1, 13, and 23, and claims 2-12, 14-22, and 24-32 depending therefrom is respectfully requested.

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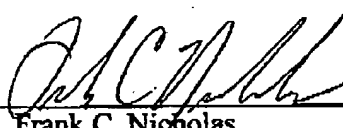
CONCLUSION

The Applicants respectfully submit that claims 1-32 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

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Respectfully submitted,
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